

Supreme Court, U. S.

FILED

MAR 10 1978

MICHAEL RODAK, JR., CLERK

No. 77-903

In the
Supreme Court of the United States

OCTOBER TERM, 1977

PATRICK MYERS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(On Petition for a Writ of Certiorari to the
Supreme Court of Illinois)

**REPLY TO BRIEF FOR RESPONDENT
IN OPPOSITION**

JEROME ROTENBERG
7 South Dearborn Street
Chicago, Illinois 60603
(312) 726-1678

Attorney for Petitioner

INDEX

	PAGE
Argument	1
Conclusion	3

AUTHORITIES CITED

Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 95 S. Ct. 1029 (1975)	2
People v. Holland, 56 Ill. 2d 318, 307 N.E. 2d 380 (1974)	2

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No. 77-903

PATRICK MYERS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(On Petition for a Writ of Certiorari to the
Supreme Court of Illinois)

**REPLY TO BRIEF FOR RESPONDENT
IN OPPOSITION**

ARGUMENT

**THE ORDER OF THE SUPREME COURT OF ILLINOIS
IS A "FINAL JUDGMENT" WITHIN THE MEANING
OF TITLE 28, UNITED STATES CODE, SECTION 1257.**

The respondent's argument that the order of the Illinois Supreme Court which remanded the cause to the Circuit Court of Cook County with directions to deny

the motion to suppress is not a final judgment within the meaning of Title 28, United States Code, Section 1257, is without merit. The case at bar falls within those categories of cases discussed by this court in *Cox Broadcasting Corporation v. Cohn*, 420 U.S. 469, 95 S.Ct. 1029 (1975).

In the case at bar in the event this court were to refuse to take jurisdiction of the federal question as to whether petitioner's right pursuant to the Fourth Amendment were violated, he would not be able to again present his federal claims for review. Illinois law precludes him from renewing his motion to suppress in the trial court absent a showing of exceptional circumstances or the availability of additional evidence, *People v. Holland*, 56 Ill.2d 318, 307 N.E.2d 380 (1974).

If he is tried on the merits in the trial court and is convicted, he would not be able to question the legality of his Fourth Amendment issue in the state appellate process for the reason that the Illinois Supreme Court has already decided this issue and directed the trial court to deny the motion to suppress. Thus the review of his federal claim in this court could never be obtained.

The highest court of Illinois has rendered a final decision on the federal question in the case at bar and whatever proceedings remain to come in the state court do not affect the federal issue involved here. However, if this court were to decide the federal question in petitioner's favor, all proceedings would be terminated inasmuch as the petitioner could not be tried if the evidence that is the subject of the pending charge is suppressed.

CONCLUSION

Wherefore, for the foregoing reasons and those previously asserted, the petition for a writ of certiorari to review the judgment of the Supreme Court of Illinois should be granted.

Respectfully submitted,

JEROME ROTENBERG
Attorney for Petitioner

7 South Dearborn Street
Chicago, Illinois 60603
(312) 726-1678